Joseph M. Infante (pro hac admission)
infante@millercanfield.com
Stephen M. Ragatzki (pro hac admission)
ragatzki@millercanfield.com
MILLER, CANFIELD, PADDOCK AND STONE, PLC
99 Monroe Avenue NW, Suite 1200
Grand Rapids, MI 49503
Tel: (616) 776-6333 / Fax: (616) 776-6322

Eugene M. Pak (Bar No. 168699)
epak@fennemorelaw.com
Angela Han (Bar No. 317137)
ahan@fennemorelaw.com
FENNEMORE WENDEL
1111 Broadway, 24th Floor
Oakland, California 94607
Tel: (510) 834-6600 / Fax: (510) 834-1928
Attorneys for Plaintiffs Hoopes Vineyard LLC, Summit Lake Vineyard, and Cook's Flat Associates a California Limited Partnership

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

HOOPES VINEYARD LLC, a California limited liability company; SUMMIT LAKE VINEYARDS & WINERY LLC, a California limited liability company; and COOK'S FLAT ASSOCIATES A CALIFORNIA LIMITED PARTNERSHIP, a California limited partnership,

Plaintiffs,

v.

COUNTY OF NAPA,

Defendant.

Case No. 3:24-cv-6256-CRB

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY PENDING RESOLUTION OF ITS MOTION TO DISMISS OR IN THE ALTERNATIVE, FOR ABSENTION

Judge: Hon. Charles R. Breyer
Hearing Date: January 10, 2025
Hearing Time: 10:00 am.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

Court Rules

SUMMARY OF ARGUMENT

The Federal Rules of Civil Procedure do not provide for an automatic stay of discovery after a motion to dismiss is filed. Instead, the "party seeking a stay of discovery carries the heavy burden of making a 'strong showing' why discovery should be denied." *Gray v. First Winthrop Corp.*, 133 F.R.D. 39, 40 (N.D. Cal. 1990) (citation omitted). The party requesting the stay must satisfy a two-step test. First, the movant must show that there is a pending motion that is "potentially dispositive of the entire case, or at least dispositive on the issue at which discovery is directed." *Smith v. Levine Leichtman Capital Partners, Inc.*, 2011 WL 13153189, at *1 (N.D. Cal. Feb. 11, 2011). Second, the movant must show that "the pending dispositive motion can be decided absent additional discovery." *Id.* "If the two above questions are answered affirmatively, the court may issue a protective order." *Id.*

Napa County's motion fails the first step. Although Napa County filed a motion to dismiss Plaintiff's original complaint, both the original complaint and motion to dismiss became moot when Plaintiffs filed their First Amended Complaint. (Dkt. #43.) Because there is no pending motion to dismiss, Napa County's motion should be denied. *See Teva Pharms., Inc. v. Concept Therapeutic, Inc.*, 2024 WL 4981090, *1 (N.D. Cal. Dec. 4, 2024).

Further, even assuming that Napa County moves to dismiss the First Amended Complaint, that motion is unlikely to dispose of this lawsuit if it is based on Napa County's prior arguments.

Standing. Napa County argued that Plaintiffs do not have standing to raise facial challenges to the County's Zoning Ordinance because they have not applied for use permits. Two Plaintiffs operate under small winery exemptions, so no use permits are required, and one already has a use permit. Regardless, the Ninth Circuit has already rejected Napa County's standing argument. *See Diamond S.J. Enterprises, Inc. v. City of San Jose*, 100 F.4th. 1059 (9th Cir. 2024) (rejecting argument to dismiss for lack of standing because a facial challenge to an ordinance that impermissibly protects restricted activity may "proceed 'without the necessity of first applying for, and being denied, a license.'" (quoting *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 755–56 (1988))).

Finality. Napa County argued that there is insufficient finality under *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson County*, 473 U.S. 172 (1985). However, *Williamson County* was based on the Supreme "Court's since-disavowed prudential rule that certain takings actions are not 'ripe' for federal resolution until the plaintiff 'seek[s] compensation through the procedures the State has provided for doing so.'" *Pakdel v. City and County of San Francisco, California*, 141 S. Ct. 2226, 2229 (2021). In *Pakdel*, the Supreme Court held that "nothing more than *de facto* finality is necessary" and the government need only be "committed to a position." *Id.* at 2230. Plaintiffs' First Amended Complaint details how Napa County committed to a position in the *Napa County v. Hoopes* state-court lawsuit.

Time-Barred. Napa County relied on *Action Apartment Association Inc. v. Santa Monica Rent Control Board*, 509 F.3d 1020 (9th Cir. 2007), to argue that zoning ordinances become immune from legal challenge two years after their enactment. Again, the Ninth Circuit has rejected Napa County's position and limited *Action Apartment's* application to physical takings. *See, e.g.*, *Scheer v. Kelly*, 817 F.3d 1183, 1187 (9th Cir. 2016); *McCormack v. Herzog*, 788 F.3d 1017, 1029–30 (9th Cir. 2015); *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1149 (9th Cir. 2014) (allowing facial challenges to proceed beyond the two-year statute of limitations).

Abstention. Napa County suggested that this Court should abstain from the traditional exercise of federal question jurisdiction because of the *Napa County v. Hoopes* lawsuit, arguing that Summit Lake's and Smith-Madrone's claims depend on the outcome of that lawsuit. But in that case, the County successfully fought to keep Summit Lake and Smith-Madrone from intervening by arguing the opposite—that the case would have no binding effect on Summit Lake or Smith-Madrone and each could "file its own action against the County if it wishes." The County's about-face should not prevent Summit Lake or Smith-Madrone from having their day in court in this action. *See Doran v. Salem Inn, Inc.*, 422 U.S. 922 (1975). As for Hoopes, abstention is inapplicable as Hoopes is not seeking appeal of a state court judgment nor is it asking this Court to review a state court decision. *See Maldonado v. Harris*, 370 F.3d 945, 950 (9th Cir. 2004)

Finally, even if Napa County can satisfy the two-step test, it still must show good cause for

a stay under Federal Rule of Civil Procedure 26(c)(1). The County suggests only in a conclusory fashion that it will be too expensive to engage in discovery. While this suggestion is not developed, expense, standing alone, is not good cause to stay discovery. *Smith*, 2011 WL 13153189, at *2.

I. INTRODUCTION

This Court recently recognized that this "case involves serious constitutional and statutory questions, and both parties have an interest in prompt resolution – Plaintiffs so they can run their businesses, and the County so it can enforce its regulations." (Dkt. #48, at 2.) Napa County's motion to stay stands in the way of that prompt resolution and the clarity Plaintiffs need to run their businesses. This is the antithesis of the purposes of the Federal Rules of Civil Procedure which is "to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed. R. Civ. P. 1. As discussed below, this Court should deny the motion as it is premised upon a misunderstanding of case law applicable to discovery, standing, finality, abstention, and statutes of limitation, among other topics.

II. ANALYSIS

"The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 600 (D. Nev. 2011). "Had the Federal Rules contemplated that a motion to dismiss under Fed. R. Civ. P. 12(b)(6) would stay discovery, the Rules would contain a provision to that effect. In fact, such a notion is directly at odds with the need for expeditious resolution of litigation." *Gray v. First Winthrop Corp.*, 133 F.R.D. 39, 40 (N.D. Cal. 1990).

In determining whether to grant a stay, courts consider two factors. First, the "pending motion must be potentially dispositive of the entire case, or at least dispositive on the issue at which discovery is directed." *Smith v. Levine Leichtman Capital Partners, Inc.*, 2011 WL 13153189, at *1 (N.D. Cal. Feb. 11, 2011). Next, a court considers "whether the pending dispositive motion can be decided absent additional discovery." *Id.* "If the two above questions are answered affirmatively, the court may issue a protective order." *Id.*

The "party seeking a stay of discovery carries the heavy burden of making a 'strong showing' why discovery should be denied." *Gray*, 133 F.R.D. at 40 (citation omitted). "To prevail on a motion for a protective order, the party seeking the protection has the burden to demonstrate 'particular and specific demonstration[s] of fact, as distinguished from conclusory statements ....'" *Seven Springs Ltd. P'ship v. Fox Capital Mgmt. Corp.*, 2007 WL 1146607, *1 (E.D. Cal. April 18,

2007) (quoting *Kiblen v. Retail Credit Co*., 76 F.R.D. 402, 404 (E.D. Wash. 1977)). "As a disfavored motion, it will be denied if there is any set of circumstances under which the pleaded [claims] could succeed." *Kiblen*, 76 F.R.D. at 404. Napa County's motion does not meet this stringent test.

A. Napa County does not have a pending dispositive motion.

Plaintiffs filed their First Amended Complaint as of right under Federal Rule of Civil Procedure 15(a) on December 6, 2024. (Dkt. #43.) By filing a First Amended Complaint, their original complaint became "non-existent." *Rhodes v. Robinson*, 621 F.3d 1002, 1005 (9th Cir. 2010) ("[W]hen a plaintiff files an amended complaint, the amended complaint supersedes the original, the latter being treated thereafter as non-existent."). That, in turn, made Napa County's motion to dismiss the original complaint moot: "This amendment as a matter of course renders an original complaint null, thereby mooting defendants' motion to dismiss." *Huang v. Genesis Global Hardware, Inc.* 2020 WL 6318206, *1 (E.D. Cal. Oct. 28, 2020). Thus, "[Napa County's] Motion to Dismiss the Complaint became moot once the Amended Complaint was filed." *TI, Ltd. v. Grupo Vidanta*, 2019 WL 5556127, at *1 (S.D. Cal. Oct. 28, 2019). This Court recognized this fact and vacated all "deadlines and hearings associated with the County's motion to dismiss." ECF No. 48, Page 2.

A mooted and vacated motion cannot form the basis of the County's motion to stay. The court reached a similar result in a recent case when it "terminated Defendants' motions to dismiss and motions to stay discovery as moot in light of the Amended Complaint." *Teva Pharms., Inc. v. Concept Therapeutic, Inc.*, 2024 WL 4981090, *1 (N.D. Cal. Dec. 4, 2024). *See also Wagner v. Mastiffs*, 2009 WL 2579431, *3 (S.D. Ohio Aug. 17, 2009) (following filing of an amended complaint: "because the motion for judgment on the pleadings has been denied as moot, the motion to stay discovery pending the adjudication of that motion is likewise denied as moot."); *Wynn Las Vegas, LLC v. National Union Fire Ins. Co. of Pittsburgh, PA*, 2021 WL 1738870, *2 (D. Nev. April 30, 2021) (same); *Turner v. Wellstar Spalding Reg'l Hosp.*, 2017 WL 6994580, *2 (N.D. Ga. Feb. 9, 2017) (same.) A similar termination should occur in this case.

B. The motion to dismiss is unlikely to resolve all issues in this case.

Even if the current motion were not moot, the motion to stay discovery should still be denied because Napa County cannot clear the high bar necessary to warrant a stay. "The fact that a non-frivolous motion is pending is simply not enough to warrant a blanket stay of all discovery." *Tradebay*, 278 F.R.D. at 603. A discretionary stay of discovery is only warranted in those extraordinary cases where a district court "is convinced that the plaintiff will be unable to state a claim upon which relief can be granted." *B.R.S. Land Investors v. United States*, 596 F.2d 353, 356 (9th Cir. 1979) (citation omitted). Thus, "a stay might be appropriate where the complaint was utterly frivolous, or filed merely for settlement value." *Turner Broadcasting Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). But "there must be *no question* in the court's mind that the dispositive motion will prevail, and therefore, discovery is a waste of effort. Absent extraordinary circumstances, litigation should not be delayed simply because a non-frivolous motion has been filed." *Trzaska v. Int'l Game Tech.*, 2011 WL 1233298, at *3 (D. Nev. Mar. 29, 2011). Plaintiffs' claims are not frivolous. Plaintiffs address a few of the arguments the County raised in its motion to dismiss to demonstrate that the County has no chance of success even should it choose to file a second motion to dismiss.

1. Each Plaintiff has standing.

"The general rule applicable to federal court suits with multiple plaintiffs is that once the court determines that one of the plaintiffs has standing, it need not decide the standing of the others. *Leonard v. Clark*, 12 F.3d 885, 888 (9th Cir. 1993.) (citing *Carey v. Population Servs. Int'l*, 431 U.S. 678, 682, (1977). Where, as here, Plaintiffs are "challenging the legality of government action or inaction ... there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). Finally, "a plaintiff is presumed to have constitutional standing to seek injunctive relief when it is the direct object of regulatory action challenged as unlawful." *Los Angeles Haven Hospice, Inc. v. Sebelius*, 638 F.3d 644, 655 (9th Cir. 2011). Here, there is no question that Plaintiff Hoopes has been prosecuted by Napa County pursuant to the ordinances,

policies and ordinance interpretations at issue in this case. In multi-plaintiff cases, once a court determines one plaintiff has standing, the Supreme Court "has not encouraged courts to invest resources into determining whether more than one plaintiff can establish standing." *Set Enterprises, Inc. v. City of Hallandale Beach*, 2010 WL 11549687, *12 (S.D. Fl. June 22, 2010.) Regardless, each Plaintiff independently has standing.

Napa County contends that Plaintiffs do not have standing to bring a facial challenge to the County's ordinance because Plaintiffs "have not alleged that they intend to apply for use permits." (Dkt. #30, at 25.) But that argument is wrong because "there is no need for a party actually to apply or to request a permit in order to bring a facial challenge to an ordinance (or parts of it) ..." *MacDonald v. Safir*, 206 F.3d 183, 189 (2d Cir. 2000) (citing *City of Lakewood v. Plain Dealer Publ'g Co*., 486 U.S. 750, 755–56 (1988)). *See also Charette v. Town of Oyster Bay*, 159 F.3d 749, 757 (2d Cir. 1998) ("[making] no effort to apply for a permit .... does not, of course, deprive [plaintiff] of standing to assert that the [zoning ordinance] is facially invalid ....").

Even the case relied upon by the County, *Diamond S.J. Enterprises, Inc. v. City of San Jose*, 100 F.4th. 1059 (9th Cir. 2024), "reject[ed] the City's contention that Diamond lacks standing to bring a First Amendment facial challenge to the [ordinances]." *Id*. at 1065. The court determined that "[a] plaintiff has standing to vindicate First Amendment rights through a facial challenge when it 'argue[s] that an ordinance ... impermissibly restricts a protected activity.'" *Id.* (quoting *Santa Monica Food Not Bombs v. City of Santa Monica*, 450 F.3d 1022, 1033 (9th Cir. 2006)). The plaintiff was allowed to "proceed 'without the necessity of first applying for, and being denied, a license.'" *Id.* (quoting *City of Lakewood v. Plain Dealer Publ'g Co*., 486 U.S. 750, 755–56 (1988)). Therefore, the County is unlikely to prevail on its standing argument.

The County also alleges that Plaintiffs do not have standing to being their dormant Commerce Clause claims because the County alleges none are subject to the buy-local requirement nor have Plaintiffs alleged concrete plans to expand and be subject to the rule. But Napa County has taken the concrete position that each Plaintiff is subject to the 75% rule. *See* Dkt. #43, ¶ 610. This is yet another example of Napa County changing its interpretation of its ordinances to fit its

whims at the time. Regardless, Plaintiffs have alleged both that they would apply for increased permissions and that the imposition of the 75% Napa County grape-course requirement prevented them from doing so. *Id*. at ¶¶ 257-259, 601, 615-618.

2. Napa County's finality argument is incorrect.

The County argues that the Wineries' as-applied Takings, Due Process, and Equal Protection claims fail due to a lack of finality. (Dkt #30, at 26.) The County superficially cites to *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson County*, 473 U.S. 172 (1985), but *Williamson County* was based on the Supreme "Court's since-disavowed prudential rule that certain takings actions are not 'ripe' for federal resolution until the plaintiff 'seek[s] compensation through the procedures the State has provided for doing so.'" *Pakdel v. City and County of San Francisco, California*, 141 S. Ct. 2226, 2229 (2021). The Supreme Court's decision in *Pakdel* sets forth the current standard: "The finality requirement is relatively modest. All a plaintiff must show is that there [is] no question . . . about how the regulations at issue apply to the particular land in question." *Id*. at 2230 (internal quotation omitted). "The rationales for the finality requirement underscore that nothing more than *de facto* finality is necessary. This requirement ensures that a plaintiff has actually been injured by the Government's action and is not prematurely suing over a hypothetical harm." *Id*. (internal quotation omitted). "Once the government is committed to a position, however, these potential ambiguities evaporate and the dispute is ripe for judicial resolution." *Id*.

Plaintiffs easily meet that standard. First, what could be more final than Napa County suing Plaintiff Hoopes to enforce the ordinances, policies and interpretations at issue in this case? Next, the First Amended Complaint details how the County's position evolved over time and finally crystallized—for the first time—in the *Napa County v. Hoopes* lawsuit. See, *e.g*. Dkt #43, ¶¶ 43, 45-46, 62, 65, 67-68, 73, 109, 120-123, 128-129, 143, 157, 246-249, 252, 257-259, 261-262, 267-309, 323-352, 408-414 and 421-437. That is all that is required for finality.

3. Plaintiffs' claims are not time-barred.

The County broadly argues that that the Wineries' Claims Five through Eleven are time-barred because they were not raised within two years of the enactment of the respective sections of the Napa Ordinances, thereby immunizing the Napa Ordinances for all time. The County argues that *Action Apartment Association Inc. v. Santa Monica Rent Control Board*, 509 F.3d 1020 (9th Cir. 2007), sets forth a bright-line rule that facial takings, substantive due process claims, and equal protection claims accrue on the date of ordinance enactment.

The Ninth Circuit has already rejected that interpretation. The County "vastly overreads *Action Apartment*. It asserts that *Action Apartment*'s holding applies to all facial challenges to statutes and ordinances, not just those premised on injuries to property rights. But *Action Apartment* and the cases it cites are grounded in an analysis that applies only in the context of injury to property. In that context, the basis of a facial challenge is that the very enactment of the statute has reduced the value of the property or has effected a transfer of a property interest. This is a single harm, measurable and compensable when the statute is passed." *Scheer v. Kelly*, 817 F.3d 1183, 1187 (9th Cir. 2016) (quotations and citations omitted). *Action Apartment* is limited to physical takings affecting the price of property because "[a] landowner who purchased land after an alleged taking," therefore, "has suffered no injury." *Id*.

The County's argument "also runs into a thicket of justiciability problems" as wineries who are subject to the Napa Ordinances would not have had standing to bring their claims within the County's preferred limitations period as many affected wineries were not even established within two-years of the ordinance enactments. *Id*. at 1188. "Their cases would be time-barred before they could even be brought, an absurd result." *Id*. "Given these problems, it is unsurprising that such a reading of *Action Apartment* is contradicted by [Ninth Circuit] precedents. If a facial challenge could only be brought against a statute or ordinance within the limitations period as measured by the enactment's effective date, the vast majority of currently extant statutes and ordinances would be beyond a facial challenge. But [the Ninth Circuit] regularly hears—and upholds—facial challenges to decades-old statutes, and has done so in the years since *Action Apartment*." *Id.* For

example, the *Scheer* opinion cited *Desertrain v. City of Los Angeles*, 754 F.3d 1147, 1149 (9th Cir. 2014), which struck down as facially unconstitutional an ordinance, enacted in 1983, prohibiting using a parked vehicle "as living quarters," and *McCormack v. Herzog*, 788 F.3d 1017, 1029–30 (9th Cir. 2015), which upheld a facial challenge to an Idaho statute passed in 1973 that placed restrictions on second-trimester abortions. *Scheer*, 817 F.3d at 1188.

"Under the [County's] logic, these unconstitutional laws would have been completely insulated from facial challenges for the last several decades, along with every other statute and ordinance that has been around for more than a couple years." *Id*. "The [County's] statute of limitations argument is therefore entirely misdirected, both because of the targeted reasoning underlying *Action Apartment* and because of [the Ninth] Circuit's case law subsequent to *Action Apartment*." *Id*.

Outside the realm of property rights, the more discrete reasoning of *Action Apartment* is not pertinent. Many statutes and ordinances do not just cause 'a single harm, measurable and compensable when the statute is passed.'" *Id*. (quoting *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1119 (9th Cir. 2010); *Levald, Inc. v. City of Palm*, Desert, 998 F.2d 680, 688 (9th Cir. 1993)). "An unconstitutionally vague statute, for instance, may pose 'ongoing harms' to those who are unsure if their actions fall within its ambit." *Id*. (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir.2013)). "Laws that violate the First Amendment may similarly place an 'ongoing chill upon speech' felt by individual speakers as they contemplate communication." *Id*. (quoting *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 336 (2010). *See also Flynt v. Shimazu*, 940 F.3d 457, 464 (9th Cir. 2019) ("California's two-year statute of limitations does not bar facial challenges under the Dormant Commerce Clause"); *3570 E. Foothill Blvd., Inc. v. City of Pasadena*, 912 F. Supp. 1268, 1278 (C.D. Cal. 1996) ("a statute that, on its face, violates the First Amendment's guarantee of free speech inflicts a continuing harm. . . . This harm continues until the statute is either repealed or invalidated."). "Such laws, moreover, could affect organizations that did not exist when the laws were first enacted, or individuals who were not at that time so situated as to be affected by the regulation—or not even born yet. Injuries occasioned

by such statutes would not be apparent, or even extant, at the time of their enactment to everyone later impacted by them." *Id*.

Napa County also alleges that Plaintiffs' as-applied claims are time-barred because they do not allege County conduct within two years of the date of filing the Complaint. The County is incorrect as the First Amended Complaint alleges extensive conduct by Napa County within two years of the Complaint. *See e.g.* Dkt #43, ¶¶ 43, 45-46, 62, 65, 67-68, 73, 109, 120-123, 128-129, 143, 157, 246-249, 252, 257-259, 261-262, 267-309, 323-352, 408-414 and 421-437.

4. Abstention is not warranted.

Napa County also requests that this Court abstain from hearing every Constitutional challenge raised by all three Plaintiffs, even though only Hoopes has a pending state court case.

"District courts have an obligation and a duty to decide cases properly before them, and '[a]bstention from the exercise of federal jurisdiction is the exception, not the rule.'" *City of Tucson v. U.S. W. Commc'ns, Inc.*, 284 F.3d 1128, 1132 (9th Cir. 2002) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976)). This obligation to hear matters within their jurisdiction is "virtually unflagging." *Deakins v. Monaghan*, 484 U.S. 193, 203 (1988). Abstention from this obligation is generally permitted only in "exceptional circumstances," when "denying a federal forum would clearly serve an important countervailing interest." *Quackenbush v. Allstate Ins. Co*., 517 U.S. 706, 716, (1996) (citations omitted). Abstention remains, however, "an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it." *Colorado River*, 424 U.S. at 813.

Napa County's abstention argument in its motion to dismiss consists of one page of argument with nothing more than citation to general caselaw and no analysis. In its motion to stay discovery, the County clarifies that it is asking for *Younger* or *Rooker-Feldman* abstention. As discussed below, the County comes nowhere close to meeting its burden on either doctrine.

a. *Younger* abstention cannot apply to Summit Lake or Smith-Madrone.

Federal courts invoke *Younger v. Harris*, 401 U.S. 37, 49 (1971), to abstain from interfering in state court criminal proceedings. When applying *Younger*, courts ask whether the state proceedings "(1) are ongoing; (2) implicate "important state interests"; and (3) provide an adequate opportunity to raise federal questions." *Potrero Hills Landfill, Inc. v. Cnty. of Solano*, 657 F.3d 876, 882 (9th Cir. 2011) (citing *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). The Ninth Circuit also asks whether "(4) the federal court action would enjoin the proceeding, or have the practical effect of doing so." *Id.* (cleaned up).

A good analog for the "ongoing" state proceedings requirement is *Doran v. Salem Inn, Inc.*, 422 U.S. 922 (1975). There, the Supreme Court reversed the application of *Younger* to two plaintiffs challenging a local ordinance when only a third co-plaintiff was the subject of an enforcement action under the same ordinance. The Supreme Court noted:

> While there plainly may be some circumstances in which legally distinct parties are so closely related that they should all be subject to the Younger considerations which govern any one of them, this is not such a case;—while respondents are represented by common counsel, and have similar business activities and problems, they are apparently unrelated in terms of ownership, control, and management. We thus think that each of the respondents should be placed in the position required by our cases as if that respondent stood alone.

Id. at 929. Like the two plaintiffs in *Doran*, Summit Lake and Smith-Madrone are not parties to the ongoing *Napa County v. Hoopes* lawsuit. In fact, they attempted to intervene, and Napa County fought to keep them out of that case. Also, like *Doran*, there is no question that Hoopes, Summit Lake, and Smith-Madrone are unrelated in terms of ownership, control, and management. (*See* Dkt. #43, ¶¶ 10–12.) On those facts, *Younger* abstention is inappropriate.

Napa County's *Younger* argument is frivolous given its arguments to the state court. As outlined in the First Amended Complaint, Summit Lake and Smith-Madrone tried to intervene in the *Napa County v. Hoopes* lawsuit. (*Id*., ¶¶ 110, 158.) Napa County opposed intervention and argued that Summit Lake and Smith-Madrone's situation were "not in the least equivalent or even

similar to the Hoopes situation." (*Id*., ¶¶ 111, 159.) The County continued, "[i]f [Summit Lake or Smith-Madrone have] unique concerns, then those concerns would be specific to its property or its treatment by the County thus negating its other arguments of having sufficient interest in this litigation to intervene." (*Id*., ¶¶ 112, 160.) Napa County also stated, "there are significant differences in the cases including the different zoning districts, the type of, and intensity of the, uses made by the respective properties over several decades." (*Id.,* ¶¶ 113, 161.) The County concluded that intervention "should be denied and [Summit Lake/Smith-Madrone] can file its own action against the County if it wishes." (*Id*., ¶¶ 114, 162.)

On November 20, 2023, the state court held a hearing on the motion to intervene where Napa County's counsel argued: "there's no res judicata or collateral estoppel effect. This is a standalone case … it's not binding on either of the proposed intervenor's as a matter of law, because they're not parties, and they're not in privity." (*Id*., ¶ 115.) Napa County further argued that while the court might make a judgment as to Hoopes, it would be "making a judgement that's not binding on these other cases. As a matter of law, it cannot be binding." (*Id*., ¶ 116.) The County concluded by taking the position that "[t]he court is going to make a determination that's binding on Hoopes, not on anyone else. So, it doesn't conclusively resolve anything with respect to these other wineries." (*Id*., ¶ 117.) The state court denied Summit Lake and Smith-Madrone's motions to intervene and adopted Napa County's argument that "any judgment rendered in the Hoopes action will have no direct effect upon any person other than Hoopes." (*Id*., ¶¶ 118, 163.)

Napa County got what it asked for—a lawsuit filed by Summit Lake and Smith-Madrone. Abstention from considering their claims would be inappropriate. Napa County is also judicially estopped arguing that any decision *Napa County v. Hoopes* is binding upon Summit Lake or Smith-Madrone. *See Hamilton v. State Farm Fire & Cas. Co.,* 270 F.3d 778, 783 (9th Cir.2001) (judicial estoppel "is also appropriate to bar litigants from making incompatible statements in two different cases.")

As to Hoopes, this case would not enjoin the *Napa County v. Hoopes* lawsuit or have the practical effect of doing so. *Potrero Hills*, 657 F.3d at 882. Hoopes is not asking this Court to stop the state court proceedings or to set aside any rulings there.

b. *Rooker-Feldman* does not apply.

Napa County argues that this case is a collateral attack on the *Napa County v. Hoopes* lawsuit without further explanation. Presumably, by using the term "collateral attack," Napa County is implying that the *Rooker-Feldman* doctrine applies without citing to that doctrine. This is, of course, because *Rooker-Feldman* cannot apply to this case.

The *Rooker–Feldman* doctrine prohibits "state-court losers complaining of injuries caused by state court judgments rendered before the district court proceedings commenced" from filing claims in federal court that essentially ask the federal district court to review and reject the state court decision. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp*., 544 U.S. 280, 284 (2005). But a federal claim is not barred by *Rooker-Feldman* where a plaintiff "complains of legal wrongs caused by adverse parties, and not the state court judgment." *Ivey v. Spilotro*, 2012 WL 2788980, *3 (D. Nev. July 9, 2012). In determining the applicability of the *Rooker–Feldman* doctrine, federal courts "cannot simply compare the issues involved in the state-court proceeding to those raised in the federal-court plaintiff's complaint," but instead "must pay close attention to the relief sought by the federal-court plaintiff." *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir. 2003).

"[A] district court does have jurisdiction over a 'general' constitutional challenge that does not require review of a final state court decision in a particular case." *Worldwide Church of God v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (citing *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462, 482–86 & n. 16 (1983) and *Tofano v. Supreme Court of Nevada*, 718 F.2d 313, 314 (9th Cir. 1983)). *See also Razatos v. Colorado Supreme Court*, 746 F.2d 1429, 1433 (10th Cir. 1984); *Edwards v. Illinois Bd. of Admissions to Bar*, 261 F.3d 723, 729 (7th Cir. 2001) ("When the litigant is challenging the constitutionality of a rule that was applied to him, but is not asking to correct or revise the determination that he violated the rule, *Rooker–Feldman* is no obstacle to the maintenance of the suit.") *Maldonado v. Harris*, 370 F.3d 945, 950 (9th Cir. 2004), involved a

state court nuisance finding against the plaintiff and a subsequent federal lawsuit challenging the constitutionality of the ordinance in question. The Ninth Circuit reversed the district court's dismissal under *Rooker-Feldman* because the plaintiff was not seeking review of the judgment but review of the constitutionality of the ordinances which underly the judgment. *Id*. The Ninth Circuit held that "[o]ur conclusion remains the same even though Maldonado's complaint seeks relief from the injunction entered by the state court." *Id*.[1] (citing *Kougasian v. TMSL, Inc*., 359 F.3d 1136, 1140 (9th Cir. 2004)). "[F]or *Rooker–Feldman* to apply, "a plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for that relief." *Id*. at 950-51 (citing *Kougasian,* 359 F.3d at 1140).

Here, Plaintiffs are "not asking this court to determine whether [a] state court was correct," so *Rooker-Feldman* does not apply. *Ivey*, 2012 WL 2788980, at *3. Instead, Plaintiffs are raising constitutional challenges to Napa County's policies and interpretations of policies that only came to light for the first time in the *Napa County v. Hoopes* lawsuit. This Court has jurisdiction over those claims and should not abstain under *Rooker-Feldman*.

c. *Younger* does not apply.

For similar reasons to *Rooker-Feldman*, abstention under *Younger* is also not warranted because it is not the case that "the federal action would effectively enjoin the state proceedings." *Citizens for Free Speech, LLC v. County of Alameda*, 953 F.3d 655, 657 (9th Cir. 2020). For *Younger* to apply, "[t]he requested relief must seek to enjoin—or have the practical effect of enjoining—ongoing state proceedings." *ReadyLink Healthcare, Inc*., 754 F.3d at 758. Here, that is not the case. Plaintiffs are not asking this Court to enjoin the state court proceedings and any judgment in this case will not have the practical effect of enjoining the state court case as the issues here are constitutional, not nuisance laws as in the state court. "And there is, of course, no doctrine requiring abstention merely because resolution of a federal question may result in the overturning

[1] The Ninth Circuit in *Maldonado* also determined that the state court nuisance judgment had no preclusive effect on the plaintiff's federal claims because "the primary rights involved in the two suits are different, the causes of action are also different, and the judgment against Maldonado in the nuisance action therefore does not bar any of his federal claims." *Id*. at 952. Though not raised by Napa County, the same would be true in this case.

of a state policy." *Zablocki v. Redhail*, 434 U.S. 374, 380, n. 5, (1978).

C. Napa County does not have good cause to stay discovery.

Even if it could meet the two-factor test discussed above, Napa County still must show good cause under Federal Rule of Civil Procedure 26(c)(1) why discovery should be stayed. *Smith v. Levine Leichtman Capital Partners, Inc.*, 2011 WL 13153189, at *2 (N.D. Cal. Feb. 11, 2011). That showing is not automatic. "A party seeking a stay of discovery carries the heavy burden of making a 'strong showing' why discovery should be denied." *Gray v. First Winthrop Corp.*, 133 F.R.D. 39, 40 (N.D. Cal. 1990) (quoting *Blankenship v. Hearst Corp*., 519 F.2d 418, 429 (9th Cir. 1975)). "The moving party must show a particular and specific need for the protective order, as opposed to making stereotyped or conclusory statements." *Id*. For example, in *Kincheloe v. American Airlines, Inc.*, 2021 WL 5847884 (N.D. Cal. Dec. 9, 2021), the court found good cause where the defendant averred that a preliminary review of the discovery sought would require a review of "50,000 search hits and families" which would take over 1,000 attorney hours to review.

Here, Napa County makes the conclusory statement that resources will be conserved by not engaging in discovery. However, "[t]he expense of discovery alone does not amount to good cause to stay discovery." *Smith*, 2011 WL 13153189, at *2. Absent any other argument, Napa County has not made the sort of particularized showing that courts require. Instead, according to Napa County, it has already produced 17,000 relevant documents in the state court litigation. It should not be any trouble to produce those documents in this case. It may be that Napa County need only fill in the gaps where Plaintiffs have sought information not sought in the state court case.

III. CONCLUSION

A stay of discovery is a disfavored and rare result. At the very least, Napa County invited this lawsuit from Summit Lake and Smith-Madrone after fighting to keep them out of the *Napa County v. Hoopes* lawsuit. It cannot now use that lawsuit to prevent Summit Lake and Smith-Madrone from litigating their case in federal court. The motion to stay discovery should be denied.

Respectfully submitted,

Dated: December 18, 2024

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

By: */s/ Joseph M. Infante*
Joseph M. Infante, pro hac admission
Attorneys for Plaintiffs

43062489.3/162870.00001